

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 3007 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the Civil Judge?

=====

CHIRAYUSH BABUBHAI PATEL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR AD SHAH for Applicant(s) : 1 - 2.
MR M.R.MENGDEY, ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR ATUL H MEHTA for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 12/09/2007****ORAL JUDGMENT**

1. Present application has been filed under Section 482 of the Criminal Procedure Code for quashing the proceedings of Criminal Case No. 1251 of

2005 pending in the Court of Chief Judicial Magistrate, Vadodara against the petitioner for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code (for short "**IPC**").

2. Both the petitioners original accused Nos. 2 and 3 are charge-sheeted by the J.P.Road Police Station, Vadodara for the offences punishable under Sections 406, 420, 409 and 34 of the IPC in C.R. No. I-44 / 2004. That one FIR was filed by respondent No.2 herein - Manager of Cooperative Bank of Baroda Ltd. at J.P.Road Police Station, Vadodara on 24.01.2004 against Shree Lamitex Pvt. Ltd. and four others. Original complainant was working as Manager of Cooperative Bank of Baroda Ltd, Vadodara (for short "**the Bank**") and original accused Nos. 2 and 3 were Directors of the original accused No.1 - Shree Lamitex Pvt. Ltd. and original Accused Nos. 4 and 5 were the guarantors in the loan facility granted to original accused No.1 - Shree Lamitex Pvt. Ltd.

3. It was the case on behalf of the prosecution that accused No.1 - Shree Lamitex and its Directors

applied for loan facilities for the purpose of their business and the Bank sanctioned loan facility to the tune of Rs.70 lacs on or about 31st July, 2000. The said loan facility was granted against the hypothecation of Book of Debts of Shree Ram Fertilizers & Chemicals - Kota, G.N.F.C., Reliance Industries Ltd., Gujarat Ambuja Cement, NFL Gas Authority. It was the case of the prosecution that the Bank also sanctioned loan to the tune of Rs.30 lacs against the loan facility of hypothecation of stocks and the accused had to maintain regularly hypothecation account (Cash Credit Facility). As per the prosecution under the said hypothecation facility, the accused Company was required to deposit the amount realized from book debts recovery and sale proceeds of the stock and the accused company was also required to submit statement as per the terms and conditions of hypothecation agreement. That the accused executed necessary documents such as Promissory Note, Karaj Khat, Kabulatnama, Agreement of Hypothecation of Book Debts, Agreement of Hypothecation of Stocks, Guarantee Deed etc in favour of the Bank. It is the case on behalf of the

prosecution that thus the Bank had advanced Rs.1.00 Crore to the accused and inspite of the fact that though the accused had agreed to maintain and continue the operation of hypothecation limit account (cash credit account), have failed to operate the said account since June, 2002. That the accused Company through its Directors had disposed of the entire stock and did not deposit the said amount in hypothecation limit account. Similarly, the recovery amount of Book Debts having been realized was not deposited in the said account, the total outstanding amount of Rs.1,29,56,931/- is due and it was alleged that the petitioner and others have committed the offences punishable under Sections 406, 420 read with Section 34 of the IPC. That the Investigating Officer submitted the charge-sheet in the month of April, 2005 against the petitioner - accused and during the course of investigation, the Investigating Officer recorded the statements of witnesses and collected documentary evidence in respect to the loan facility granted by the Bank to the Company. It appears from the record that in between, the petitioners preferred Special Criminal Application

No. 162 of 2004 before this Court for quashing the FIR. However, in view of submission of charge-sheet before the learned Chief Judicial Magistrate, Vadodara, the petitioners withdrew the Special Criminal Application with a view to approach the learned Magistrate for submitting discharge application. The accused preferred application for discharge and the learned Chief Judicial Magistrate, Vadodara rejected the said application by order dated 22.01.2007 by holding that *prima-facie* offences under sections 406, 420, 409 of the Indian Penal Code have been made out. Being aggrieved and dissatisfied with the same, the petitioners- original accused Nos. 2 and 3 have preferred the present petition under Section 482 of the Criminal Procedure Code to quash and set aside the criminal proceedings and the charge-sheet.

4. Mr.A.D.Shah, learned Advocate appearing on behalf of the petitioners has vehemently submitted that even considering entire charge-sheet papers offences under Sections 406, 420, 409 of the IPC are not made out and therefore, it is requested to quash the complaint and the criminal proceedings. He has

submitted that the ingredients of Sections 406, 420 and 409 are not satisfied and therefore, to continue the criminal proceedings against the petitioners would be abuse of process of law and unnecessary harassment to the petitioners. It is also submitted that as the ingredients for the offences are not satisfied, the petitioners are not likely to be convicted and therefore, it is requested to quash and set aside the criminal proceedings. Mr.Shah, learned Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation, SPE, SIU(X) V/s. Duncans Agro Industries Ltd.** reported in AIR 1996 SC 2452 as well as recent decision of the Hon'ble Supreme Court in the case of **M/s. Indian Oil Corporation v/s. M/s. NEPC India Ltd. & Ors.** reported in AIR 2006 SC 2780 and has submitted that nothing was entrusted with the Bank and therefore, there is no question of committing offences as alleged under Sections 405/406 of the IPC. It is further submitted that as held by Hon'ble Supreme Court when the goods are hypothecated and there is non-payment, offences under Sections 405, 406, 420 are not attracted and therefore, it is

requested to allow the present application in exercise of powers under Section 482 of the Cr.P.C.

5. On the other hand Mr.Atul Mehta, learned Advocate appearing on behalf of the original complainant as well as Mr.M.R.Mengdey, learned Additional Public Prosecutor while opposing the present application have submitted that under the deed of agreement the amount was to be deposited on realizing the same by selling goods/ stocks which was hypothecated and still the accused persons did not deposit the amount realized by selling stocks and therefore, *prima-facie* case is made out for the offences punishable under Sections 406, 420 and 409 of the IPC. It is submitted that at the time of framing the charge-sheet it is not required to consider at that stage whether the accused persons are likely to be convicted or not. It is submitted that at that stage what is required to be considered is whether there is *prima-facie* case made out for further trial and detail appreciation of evidence is not required at the stage of submitting charge-sheet and/or framing of charges. Therefore, it is requested

to dismiss the present application.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. At the outset it is required to be noted that FIR came to be registered against the petitioner and others on 24.01.2004 by the Manager of the Bank and that approximately Rs.1,29,56,931/- was due and payable to the Bank at the relevant time. Initially the Bank sanctioned loan facility to the tune of Rs.70 lacs on or about 31.07.2000. The said loan facility was granted against hypothecation of Book debts. That further amount to the tune of Rs.30 lacs was sanctioned against the loan facility of hypothecation of stocks and the accused executed necessary documents, such as Promissory Note, Karaj Khat, Kabulatnama, Agreement of Hypothecation of Book Debts, Agreement of Hypothecation of Stocks, Guarantee Deed etc. in favour of the Bank. Under the said hypothecation facility, accused - Company was required to deposit amount realized from Book Debts recovery and sale proceeds of the stocks. The accused Company was also required to submit statement as per the terms and conditions of hypothecation agreement.

It is the case of the prosecution that the Company through its Directors had disposed of entire stock and did not deposit the said amount in hypothecation limit account and even recovery amount of Book Debts having been realized was not deposited in the said account. Thus total outstanding amount was Rs.1,29,56,931/-. It is the case of the Bank that accused after obtaining loan facilities did not maintain hypothecated stock and book debts recovery and also did not deposit the same in the hypothecation limit account and not only that but violated the terms and conditions of the agreement of hypothecation of book debts and hypothecation of stock limit. That the accused have committed breach of both the agreements, cheated the Bank and committed Breach of trust. Now after investigation the charge-sheet is filed against the petitioner and others for the offences punishable under Sections 406, 420 read with Section 34 of the IPC. The petitioner and others submitted application for discharge before the Chief Judicial Magistrate and same came to be rejected by the learned Chief Judicial Magistrate by holding that *prima-facie* case

is made out against the petitioners for the offences punishable under Sections 406, 420 and 409 of the IPC.

8. So far as the contention on behalf of the petitioners that in view of bid of hypothecation, it gives only right to enforce charge created under the deed of hypothecation in the manner specified in the deed and merely non-payment would not amount to criminal breach of trust attracted under Sections 405 and 406 of the IPC is concerned, at the outset it is required to be noted that whether hypothecation deed was creating a floating charge or fixed charge is question of further evidence which is required to be considered at the time of trial and in view of the charge-sheet filed after investigation is completed and more particularly the petitioners have not disputed any amount on realizing the same by selling goods / stocks and considering the same charge-sheet is filed, same is not required to be quashed and set aside without further trial. At this stage, learned Magistrate and/or this Court is not required to further appreciate evidence on record in detail as if it is trial.

9. Now as held by the Hon'ble Supreme Court in the case of **State of Orissa and Anr. V/s. Saroj Kumar Sahoo** reported in (2005) 13 SCC 540 at the time of submitting the charge-sheet and/or framing of charge by the learned Magistrate, what is required to be considered is *prima-facie* for further trial and at that stage detail appreciation of evidence is not required. As held by the Hon'ble Supreme Court at this stage it is not required to be considered whether accused persons are likely to be convicted. Under the circumstances, the prayer of the petitioners at this stage to consider that the petitioners are not likely to be convicted and/or to appreciate the evidence in detail cannot be accepted. The learned trial Court has not committed any error in dismissing the application for discharge by holding that there is *prima-facie* case made out against the petitioners for the offences punishable under Sections 406, 420, 409 of the IPC. Looking to the averments and allegation which are referred to herein above, no case is made out to quash and set aside the criminal proceedings and the charge-sheet filed against the petitioners.

10. For the reasons stated above, the application fails, requires to be dismissed and accordingly it is dismissed. Notice discharged.

[M.R.Shah, J.]

satisfy